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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-241

MR. AND MRS. MALVIN HENNIGAN,
Petitioners-Appellants,

versus

PLACID OIL COMPANY, ET AL,
Respondents-Appellees.

Appeal from United States Court of Appeals for the Fifth Circuit

ORIGINAL BRIEF ON BEHALF OF RESPONDENT-APPELLEE, PENROD DRILLING COMPANY

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

STATEMENT OF THE CASE

On November 19, 1971, Gary Neil Hennigan, the son of Mr. and Mrs. Malvin Hennigan, was killed while working in the course and scope of his employment for Penrod Drilling Company on a stationary platform which was located in Louisiana Block 216, Ship Shoal, on the Outer Continental Shelf. He was survived by his mother, father and two sisters.

On October 12, 1972, Mr. and Mrs. Malvin Hennigan filed suit in the United States District Court, Western District of Louisiana, Lafayette Division, against Placid Oil Company, Penrod Drilling Company and Hartford Accident and Indemnity Company. In essence, the plaintiffs contend that Gary Hennigan's death was caused by the negligence of Placid Oil Company and Penrod Drilling Company. There is no contention that Gary Hennigan was a Jones Act seaman.

Penrod Drilling Company (hereinafter sometimes referred to as Penrod) thereafter filed a motion to dismiss and alternatively, a motion for summary judgment. The basis of the motions was that the plaintiffs' exclusive remedy is under the Longshoremen's & Harbor Workers' Compensation Act and that the plaintiffs are precluded from filing a tort action against Penrod, their son's employer. After hearing was held on the motions, the Trial Court granted the motion for summary judgment and dismissed the action against Penrod. Petitioners appealed the ruling to the Court of Appeals for the Fifth Circuit. The Fifth Circuit affirmed the holding of the lower Court, *Hennigan v. Placid Oil Co.*, et al, 496 F.2d 876 (C.A. 5th Cir. 1974). Petitioners are now seeking a writ of certiorari.

ARGUMENT

Under the provisions of the Outer Continental Shelf Lands Act a claim for death of an employee resulting from operations on a structure such as a fixed platform shall be payable under the Longshoremen's & Harbor Workers' Compensation Act.[1] The claim for the death of Gary Hennigan certainly falls in this category.

Since the Longshoremen's & Harbor Workers' Compensation Act is the applicable statute, it is important to review some of its provisions. Title 33, U.S.C.A., Section 905 provides in part:

> "*The liability of an employer prescribed in Section 904 of this title shall be exclusive and in place of all other liability of such employer* to the employee, his legal representative, husband or wife, parents, dependents, next of kins, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death . . ." (Emphasis added)

Simply stated, the effect of the provision is that *all remedies* formerly possessed by an employee (covered by the statute) to proceed, *ex delicto*, under the state law or in admiralty on a cause of action based upon the negligence of the employer, have been superseded and the remedies granted by the Act substituted therefore.[2]

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1 43 U.S.C.A. 1333(b)(c)

2 *Nogueira v. New York, N.H. and N.R. Co.*, 281 U.S. 128, 50 S.Ct. 303; *South Chicago Coal and Dock Co. v. Bassett*, 309 U.S. 251, 60 S.Ct. 544.

In an attempt to circumvent the clear legislative mandate, the petitioners in the instant case argue that since they were not dependent on their son, they should be permitted to pursue a negligence claim against their son's employer.

It strikes the appellee that the petitioners' argument overlooks the underlying purposes which prompted Congress to enact the Longshoremen's & Harbor Workers' Compensation Act. The Act, which is social legislation, was passed for the joint benefit of labor and management in order to insure that employees who became disabled as a result of their labors in hazardous industries would have, during their period of disability, a weekly income for the upkeep of themselves and their families. It was also deemed advisable to provide for compensation, in cases of death, to the person dependent upon the employee. In order that this end might be accomplished, Congress provided for sacrifices to be made by both the employer and the employee. The employee was required to waive rights granted to him under civil and maritime law. The employer, on the other hand, was deprived of the defenses afforded by him. It was a trade for their joint benefit. The net effect of this trade was noted in the recent case of *Nations v. Morris*, 483 F.2d 577, 587 (CA 5th Cir. 1973) when the Court said,

> "Section 905(a) and 933(i) of L and H *completely obliterates the rights at common, civil and maritime law against Employer* and fellow employee. Congress in its unlimited power has determined that the relationship gives rise only to compensation benefits. The nature of the

obligation is that there is no — the word is no-obligation." (Emphasis added)

The issue raised by petitioners is not new in the State of Louisiana. The case of *Rhinehart v. T. Smith and Son*, 14 So. 2d 287 (Orl. Cir. 1943) involved a suit filed by a surviving brother and sister for the death of their brother who drowned when he fell from a barge into the Mississippi River. He had been employed as a longshoreman. The action against Rhinehart's employer was to recover damages under Article 2315 of the Louisiana Civil Code. The defendant-employer filed a number of exceptions, one of which contended that the plaintiffs' exclusive remedy was under the Longshoremen's & Harbor Workers' Compensation Act. Among other things, the plaintiffs contended that since they were not dependent on the deceased and would therefore be without a right to obtain compensation under the Act, they should be permitted to pursue the remedy given to them by Article 2315 of the Louisiana Civil Code. In rejecting this contention the Court said,

> "*Thus, it is apparent that plaintiffs have no right of action to sue for the death of their brother under Article 2315 of the Civil Code, since this right was specifically superseded by Congress in the Longshoremen's & Harbor Workers' Compensation Act.* And, since it is well settled that the death of Rhinehart resulted from an accident arising out of and within the meaning of the Longshoremen's Act and that, if he had left dependents as defined by that statute, they would have been accorded the remedies therein provided, the state court is without jurisdiction to

grant relief to plaintiffs under Article 2315 of the Civil Code." (Emphasis added)

The Louisiana Supreme Court reached the same conclusion when confronted with the issue involving the Louisiana Compensation Act.[3]

The Court of Appeals for the Fifth Circuit has also faced this issue in the case of *Patterson v. Sears, Roebuck & Co.*, 196 F.2d 947 (CA 5th Cir. 1952). In that case the Court held that the Alabama Workmen's Compensation Act provided the exclusive remedy for death damages in cases of employee-employer injuries and that this exclusive remedy was not altered by the fact that the survivors may not have been dependent upon the deceased. This holding was followed by the Supreme Court of Alabama in the case of *DeArman v. Ingalls Iron Works*, 61 So. 2d 764 (1952) and similar decisions are found in four other states.[4]

In support of their case, the petitioners have cited several cases.[5] It is important to note that these cases did not involve the issue which is presented in this case and in each of those cases a vessel was involved, not a fixed platform. Admittedly, a different situation exists where a vessel is involved.

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3 *Atchison, et al v. May*, 201 La. 1003, 10 So.2d 785 (1942)

4 *Shanahan v. Monarch Engineering Co.*, 219 N.Y. 469, 114 N.E. 795; *Gregutis v. Waclark Wire Works*, 86 H.L., 92 A. 354; *Bigby v. Pelican Bay Lumber Co.*, 173 Orl. 682, 147 P.2d 199; *McDonnell v. Berkshire Street Railway Co.*, 243 Mass. 94, 137 N.E. 268

5 *Reed v. Steamship Yaka*, 373 U.S. 412, 83 S.Ct. 1349; *Ryan Stevedore Co. v. Pan-Atlantic Steamship Corp.*, 350 U.S. 124, 76 S.Ct. 232; *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 66 S.Ct. 872

The petitioners have also cited the case of *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772 (1970). Footnote 11 on page 1784 of that decision reads as follows,

> "In 1927 Congress passed the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U.S.C. Sec. 901, et seq., granting to longshoremen the right to receive workmen's compensation benefits from their employers for accidental injury or death arising out of their employment. *These benefits are made exclusive of any other liability for employers who comply with the Act.* The Act does not, however, affect the longshoreman's remedies against various persons other than his employer, such as a shipowner, and therefore does not bear on the problem before us except perhaps to serve as yet another example of congressional action to allow recovery for death in circumstances where recovery is allowed for nonfatal injuries." (Emphasis added)

In summary, it is the position of the appellee that the exclusive remedy for the death of Gary Hennigan is under the Longshoremen's & Harbor Workers' Compensation Act and petitioners are barred from pursuing a negligence claim against Penrod, their son's employer.

CONCLUSION

Appellee respectfully submits that the Trial Court was correct in granting the motion for summary judgment and dismissing the suit against Penrod Drilling Company. Appellee further submits that the Court of Appeals for the Fifth Circuit was correct in affirming the holding of the lower court.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the above and foregoing brief have been duly mailed to counsel for petitioners, J. Minos Simon, Post Office Box 52116, OCS, Lafayette, Louisiana 70501.

Lafayette, Louisiana, this ____ day of November, 1974.

PATRICK A. JUNEAU, JR.